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in opinion
October 7, 1955

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Mr. Frederick N. Clarke, Commissioner
Motor Vehicle Department
State House Annex
Concord, New Hampshire

SEP 22 1955

CONCORD, N.H.

Dear Mr. Clarke:

You have asked this office to interpret the second paragraph of section 9, chapter 230 of the Laws of 1955 relative to maximum weights of motor vehicles and loads which reads as follows:

"The provisions of this act shall not apply to vehicles used exclusively in the surfacing of highways of the State of New Hampshire, or subdivisions thereof: Provided that the commodities of tar, asphalt, or the combination thereof shall not exceed 2,000 gallons on any two-axle vehicle, or 4,000 gallons on any three-axle vehicle."

Our reply to you is as follows:

1. The phrase "exclusively in the surfacing of highways of the State of New Hampshire, or subdivisions thereof" includes vehicles spreading tar and asphalt as well as pea stone, sand or gravel during such time as they are actually surfacing such highways.

2. The word "exclusively" pertains to vehicles which are engaged at the moment in such operation of surfacing highways and it does not mean vehicles so constructed as to serve no purposes other than its use in highway and construction surfacing or vehicles generally used in highway construction surfacing which might incidentally be used or driven for some other purpose.

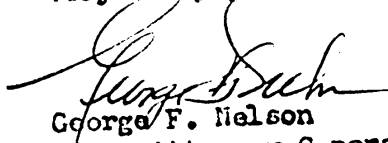
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3. The word "subdivision" may not be construed to mean agent of the federal government, i.e., the Portsmouth Air Base. The word "subdivision" relates to the political subdivisions of the State of New Hampshire which are counties and cities and towns and village districts in the State of New Hampshire. The federal government is not such subdivision.

In connection with Item 2. it will be noted that the reference in the act is to surfacing which is a limited aspect of highway construction. This authority to overload does not, in my opinion, extend to vehicles used in other phases of highway construction, such as excavation, fill or rip-rapping or basic bridge construction exclusive of the actual travelled surface.

Very truly yours,


George F. Nelson
Assistant Attorney General

GFN:L